

AMENDED IN SENATE MARCH 23, 2011

**SENATE BILL**

**No. 271**

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**Introduced by Senator Wyland**

February 14, 2011

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~~An act to amend Section 13823.7 of the Penal Code, relating to~~ *An act to amend Section 76104.6 of the Government Code, and to add Section 680.5 to the Penal Code, relating to evidence.*

LEGISLATIVE COUNSEL'S DIGEST

SB 271, as amended, Wyland. Evidence: rape ~~kit~~. kits: expedited processing.

*Existing law, the DNA Fingerprint, Unresolved Crime and Innocence Protection Act, an initiative measure approved by the voters in the November 2, 2004, statewide general election, creates in the State Treasury the state's DNA Identification Fund, and makes revenue from the fund, upon appropriation by the Legislature, available to the Attorney General solely to support DNA testing and to offset the impacts of increased testing. That act also provides for an increase in criminal penalties, revenues from which are allocated to state and local government to fund the expansion of DNA collection as required by the act. Of the funds attributable to that increase in penalties, existing law allocates 70% of the funds to the state within the first 2 years following the approval of the act; 50% of the funds to the state in the 3rd year; and thereafter, 25% of the funds to the state, with the remaining funds allocated to local governments. Existing law provides that any funds remaining in a county's share of the increase may be used for specified purposes, including expenditures made in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or*

*prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples.*

*This bill would specifically provide that a county's remaining share of funds attributable to the increase in penalties as required by the act may be used by a local sheriff, police department, district attorney, or other law enforcement agency for expenditures and administrative costs made or incurred for utilizing a laboratory, other than the Department of Justice Laboratory, as specified, to expedite the analysis and processing of rape kits and uploading rape kit information to the CAL-DNA Databank and the Federal Bureau of Investigation Combined DNA Index System.*

*The DNA Fingerprint, Unresolved Crime and Innocence Protection Act specifies that its provisions may be amended by the Legislature if the amendment furthers the act and is consistent with the purpose of the act to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime solving and for exonerating the innocent.*

*This bill would also include a legislative finding that the bill furthers, and is consistent with, the purpose of that act, as specified.*

*Existing law, the Sexual Assault Victims' DNA Bill of Rights, establishes specified rights for sexual assault victims and requires notification to sexual assault victims prior to the destruction or disposal of rape kit evidence under certain circumstances.*

*This bill would, among other things, require law enforcement agencies that obtain rape kits in connection with the investigation of a criminal case to submit those rape kits to a laboratory, approved and designated by the Department of Justice, within 10 business days of receipt. The bill would require any laboratory that receives a rape kit from a law enforcement agency, as specified, to complete analysis of that rape kit within 6 months of receipt if sufficient staffing and resources are available. The bill would require that the results of all rape kits submitted for analysis pursuant to these provisions be uploaded, pursuant to rules and procedures established by the department, to the CAL-DNA Databank and the Federal Bureau of Investigation Combined DNA Index System. The bill would require any state or local law enforcement agency, on or before March 1, 2012, to provide written notice to the Department of Justice stating the number of rape kits that have not yet been previously submitted for analysis. Because this bill would impose additional duties on local law enforcement agencies, it*

would impose a state-mandated local program. The bill would require the department to report to the Legislature and make publicly available on its Internet Web site the number of unprocessed rape kits collected statewide prior to the operative date of this act and information related to the reduction of any backlog.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law provides a protocol for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom, including the collection of physical evidence of assault, the collection of other medical specimens, and procedures for the preservation and disposition of physical evidence.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 76104.6 of the Government Code is  
2     amended to read:  
3     76104.6. (a) (1) Except as otherwise provided in this section,  
4     for the purpose of implementing the DNA Fingerprint, Unsolved  
5     Crime and Innocence Protection Act (Proposition 69), as approved  
6     by the voters at the November 2, 2004, statewide general election,  
7     there shall be levied an additional penalty of one dollar for every  
8     ten dollars (\$10), or part of ten dollars (\$10), in each county upon  
9     every fine, penalty, or forfeiture imposed and collected by the  
10    courts for all criminal offenses, including all offenses involving a  
11    violation of the Vehicle Code or a local ordinance adopted pursuant  
12    to the Vehicle Code.  
13    (2) The penalty imposed by this section shall be collected  
14    together with and in the same manner as the amounts established

1 by Section 1464 of the Penal Code. The moneys shall be taken  
2 from fines and forfeitures deposited with the county treasurer prior  
3 to any division pursuant to Section 1463 of the Penal Code. The  
4 board of supervisors shall establish in the county treasury a DNA  
5 Identification Fund into which shall be deposited the moneys  
6 collected pursuant to this section. The moneys of the fund shall  
7 be allocated pursuant to subdivision (b).

8 (3) The additional penalty does not apply to the following:

9 (A) A restitution fine.

10 (B) A penalty authorized by Section 1464 of the Penal Code or  
11 this chapter.

12 (C) A parking offense subject to Article 3 (commencing with  
13 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

14 (D) The state surcharge authorized by Section 1465.7 of the  
15 Penal Code.

16 (b) (1) The fund moneys described in subdivision (a), together  
17 with any interest earned thereon, shall be held by the county  
18 treasurer separate from any funds subject to transfer or division  
19 pursuant to Section 1463 of the Penal Code. Deposits to the fund  
20 may continue through and including the 20th year after the initial  
21 calendar year in which the surcharge is collected, or longer if and  
22 as necessary to make payments upon any lease or leaseback  
23 arrangement utilized to finance any of the projects specified herein.

24 (2) On the last day of each calendar quarter of the year specified  
25 in this subdivision, the county treasurer shall transfer fund moneys  
26 in the county's DNA Identification Fund to the Controller for credit  
27 to the state's DNA Identification Fund, which is hereby established  
28 in the State Treasury, as follows:

29 (A) In the first two calendar years following the effective date  
30 of this section, 70 percent of the amounts collected, including  
31 interest earned thereon.

32 (B) In the third calendar year following the effective date of  
33 this section, 50 percent of the amounts collected, including interest  
34 earned thereon.

35 (C) In the fourth calendar year following the effective date of  
36 this section and in each calendar year thereafter, 25 percent of the  
37 amounts collected, including interest earned thereon.

38 (3) Funds remaining in the county's DNA Identification Fund  
39 shall be used only to reimburse local for the following purposes:

1 (A) *To reimburse a local sheriff or other law enforcement*  
2 *agencies agency to collect DNA specimens, samples, and print*  
3 *impressions pursuant to this chapter; and for expenditures and*  
4 *administrative costs made or incurred to comply with the*  
5 *requirements of paragraph (5) of subdivision (b) of Section 298*  
6 *of the Penal Code including the procurement of equipment and*  
7 *software integral to confirming that a person qualifies for entry*  
8 *into the Department of Justice DNA and Forensic Identification*  
9 *Database and Data Bank local Program; and to.*

10 (B) *To reimburse a local sheriff, police department, district*  
11 *attorney, or other law enforcement agency for expenditures and*  
12 *administrative costs made or incurred for utilizing a laboratory,*  
13 *other than the Department of Justice Laboratory, pursuant to*  
14 *Section 680.5 of the Penal Code to expedite the analysis of rape*  
15 *kits and upload rape kit information to the CAL-DNA Data Bank*  
16 *and the Federal Bureau of Investigation Combined DNA Index*  
17 *System in order to proceed with a pending criminal action or*  
18 *investigation.*

19 (C) *To reimburse a local sheriff, police department, district*  
20 *attorney, and or regional state crime laboratories laboratory for*  
21 *expenditures and administrative costs made or incurred in*  
22 *connection with the processing, analysis, tracking, and storage of*  
23 *DNA crime scene samples from cases in which DNA evidence*  
24 *would be useful in identifying or prosecuting suspects, including*  
25 *the procurement of equipment and software for the processing,*  
26 *analysis, tracking, and storage of DNA crime scene samples from*  
27 *unsolved cases.*

28 (4) The state's DNA Identification Fund shall be administered  
29 by the Department of Justice. Funds in the state's DNA  
30 Identification Fund, upon appropriation by the Legislature, shall  
31 be used by the Attorney General only to support DNA testing in  
32 the state and to offset the impacts of increased testing and shall be  
33 allocated as follows:

34 (A) Of the amount transferred pursuant to subparagraph (A) of  
35 paragraph (2) of subdivision (b), 90 percent to the Department of  
36 Justice DNA Laboratory, first, to comply with the requirements  
37 of Section 298.3 of the Penal Code and, second, for expenditures  
38 and administrative costs made or incurred in connection with the  
39 processing, analysis, tracking, and storage of DNA specimens and  
40 samples including the procurement of equipment and software for

1 the processing, analysis, tracking, and storage of DNA samples  
2 and specimens obtained pursuant to the DNA and Forensic  
3 Identification Database and Data Bank Act of 1998, as amended  
4 by Chapter 6 (commencing with Section 295) of Title 9 of Part 1  
5 of the Penal Code, and 10 percent to the Department of Justice  
6 Information Bureau Criminal History Unit for expenditures and  
7 administrative costs that have been approved by the Chief of the  
8 Department of Justice Bureau of Forensic Services made or  
9 incurred to update equipment and software to facilitate compliance  
10 with the requirements of subdivision (e) of Section 299.5 of the  
11 Penal Code.

12 (B) Of the amount transferred pursuant to subparagraph (B) of  
13 paragraph (2) ~~of subdivision (b)~~, funds shall be allocated by the  
14 Department of Justice DNA Laboratory, first, to comply with the  
15 requirements of Section 298.3 of the Penal Code and, second, for  
16 expenditures and administrative costs made or incurred in  
17 connection with the processing, analysis, tracking, and storage of  
18 DNA specimens and samples including the procurement of  
19 equipment and software for the processing, analysis, tracking, and  
20 storage of DNA samples and specimens obtained pursuant to the  
21 DNA and Forensic Identification Database and Data Bank Act of  
22 1998, as amended.

23 (C) Of the amount transferred pursuant to subparagraph (C) of  
24 paragraph (2) ~~of subdivision (b)~~, funds shall be allocated by the  
25 Department of Justice to the DNA Laboratory to comply with the  
26 requirements of Section 298.3 of the Penal Code and for  
27 expenditures and administrative costs made or incurred in  
28 connection with the processing, analysis, tracking, and storage of  
29 DNA specimens and samples including the procurement of  
30 equipment and software for the processing, analysis, tracking, and  
31 storage of DNA samples and specimens obtained pursuant to the  
32 DNA and Forensic Identification Database and Data Bank Act of  
33 1998, as amended.

34 (c) On or before April 1 in the year following adoption of this  
35 section, and annually thereafter, the board of supervisors of each  
36 county shall submit a report to the Legislature and the Department  
37 of Justice. The report shall include the total amount of fines  
38 collected and allocated pursuant to this section, and the amounts  
39 expended by the county for each program authorized pursuant to  
40 paragraph (3) of subdivision (b). The Department of Justice shall

1 make the reports publicly available on the department's Internet  
2 Web site.

3 (d) All requirements imposed on the Department of Justice  
4 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence  
5 Protection Act are contingent upon the availability of funding and  
6 are limited by revenue, on a fiscal year basis, received by the  
7 Department of Justice pursuant to this section and any additional  
8 appropriation approved by the Legislature for purposes related to  
9 implementing this act.

10 (e) Upon approval of the DNA Fingerprint, Unsolved Crime  
11 and Innocence Protection Act, the Legislature shall lend the  
12 Department of Justice General Fund in the amount of seven million  
13 dollars (\$7,000,000) for purposes of implementing the act. The  
14 loan shall be repaid with interest calculated at the rate earned by  
15 the Pooled Money Investment Account at the time the loan is made.  
16 Principal and interest on the loan shall be repaid in full no later  
17 than four years from the date the loan was made and shall be repaid  
18 from revenue generated pursuant to this section.

19 (f) Notwithstanding any other provision of law, the Controller  
20 may use the state's DNA Identification Fund, created pursuant to  
21 paragraph (2) of subdivision (b), for loans to the General Fund as  
22 provided in Sections 16310 and 16381. Any such loan shall be  
23 repaid from the General Fund with interest computed at 110 percent  
24 of the Pooled Money Investment Account rate, with the interest  
25 commencing to accrue on the date the loan is made from the fund.  
26 This subdivision does not authorize any transfer that will interfere  
27 with the carrying out of the object for which the state's DNA  
28 Identification Fund was created.

29 *SEC. 2. Section 680.5 is added to the Penal Code, to read:*

30 *680.5. (a) (1) Any law enforcement agency that receives a*  
31 *rape kit obtained in connection with the investigation of a criminal*  
32 *case on or after the operative date of this section shall submit that*  
33 *rape kit within 10 business days of receipt to a laboratory approved*  
34 *and designated by the Department of Justice. Any law enforcement*  
35 *agency that receives a rape kit obtained in connection with the*  
36 *investigation of a criminal case up to 30 days prior to the effective*  
37 *date of this act shall submit that rape kit within 10 business days*  
38 *of the operative date of this section to a laboratory approved and*  
39 *designated by the department.*

1     (2) Any laboratory that receives a rape kit from a law  
2     enforcement agency pursuant to paragraph (1) shall complete  
3     analysis of that rape kit within six months of receipt if sufficient  
4     staffing and resources are available.

5     (3) The results of all rape kits submitted for analysis and  
6     analyzed pursuant to paragraphs (1) and (2) shall be uploaded,  
7     pursuant to rules and procedures established by the department,  
8     to the CAL-DNA Databank and the Federal Bureau of Investigation  
9     Combined DNA Index System (CODIS).

10    (b) (1) On or before March 1, 2012, each state or local law  
11    enforcement agency shall provide written notice to the Department  
12    of Justice, in a form and manner prescribed by the department,  
13    stating the number of rape kits related to a criminal investigation  
14    in the custody of the law enforcement agency that have not been  
15    previously submitted to a laboratory for analysis.

16    (2) On or before August 31, 2012, all law enforcement agencies  
17    shall make arrangements with one or more laboratories approved  
18    and designated by the Department of Justice to ensure that all  
19    rape kits that were collected prior to the effective date of this act  
20    and that are the subject of a criminal investigation are analyzed,  
21    and the results entered into the CAL-DNA Databank and CODIS.

22    (3) On or before June 1, 2012, the Department of Justice shall  
23    report to the Legislature and make publicly available on its Internet  
24    Web site the number of unprocessed rape kits collected statewide  
25    prior to the operative date of this section and the most up to date  
26    information on the reduction of any backlog. The report shall be  
27    submitted in compliance with Section 9795 of the Government  
28    Code.

29    (c) The failure of a law enforcement agency to submit a rape  
30    kit collected on or after the operative date of this section pursuant  
31    to subdivision (a) shall in no way alter the authority of the law  
32    enforcement agency to submit the rape kit, the authority of a  
33    laboratory to accept and analyze the rape kit, or the authority of  
34    the appropriate entity to maintain or upload the results into the  
35    CAL-DNA Databank and CODIS.

36    (d) All rape kit evidence submitted for analysis pursuant to this  
37    section shall be accompanied by the following signed certification:  
38    “This evidence is being submitted by (name of investigating law  
39    enforcement agency) in connection with a prior or current criminal  
40    investigation.”



1     (e) Evidence derived from the analysis of any rape kit is not  
2     made inadmissible in court by the fact that it was not processed  
3     and analyzed within the timeframes required by this section.

4     (f) (1) If the Department of Justice receives written confirmation  
5     from the investigating law enforcement agency or the department  
6     otherwise determines that a record that has been uploaded into  
7     the CAL-DNA Databank and CODIS was not connected to a  
8     criminal investigation, the record shall be expunged from the  
9     CAL-DNA Databank and the proper procedures followed to  
10    expunge the information from CODIS. The department shall  
11    prescribe rules and procedures to ensure that written confirmation  
12    is sent to the submitting law enforcement agency verifying the  
13    expungement.

14    (2) The failure to expunge a record or strictly comply with the  
15    provisions of paragraph (1) shall not be grounds for challenging  
16    the validity of a CAL-DNA Databank or CODIS match or other  
17    CAL-DNA Databank or CODIS information, and evidence based  
18    upon or derived from the CAL-DNA Databank or CODIS may not  
19    be excluded by a court for these reasons.

20    (g) The department shall establish rules and regulations for the  
21    operation of this section.

22    (h) For purposes of this section, “laboratory” means any local  
23    sheriff, police, district attorney, or regional state crime laboratory  
24    or other laboratory that meets state and federal requirements,  
25    including the Federal Bureau of Investigation Quality Assurance  
26    Standards, and that is accredited by an organization approved by  
27    the National DNA Index System Procedures Board for the  
28    processing and analysis of forensic identification samples and  
29    testimony related to that analysis.

30    SEC. 3. The Legislature finds and declares that this bill  
31    further, and is consistent with, the purpose of the DNA  
32    Fingerprint, Unsolved Crime and Innocence Protection Act to  
33    enhance the use of DNA identification evidence for the purpose of  
34    accurate and expeditious crime solving and for exonerating the  
35    innocent by accelerating the testing of DNA samples that cannot  
36    be handled in an expeditious manner without the use of an outside  
37    laboratory.

38    SEC. 4. If the Commission on State Mandates determines that  
39    this act contains costs mandated by the state, reimbursement to  
40    local agencies and school districts for those costs shall be made

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code.*

3 ~~SECTION 1. Section 13823.7 of the Penal Code is amended~~  
4 ~~to read:~~

5 ~~13823.7. The protocol adopted pursuant to Section 13823.5~~  
6 ~~for the examination and treatment of victims of sexual assault or~~  
7 ~~attempted sexual assault, including child molestation, and the~~  
8 ~~collection and preservation of evidence therefrom shall include~~  
9 ~~provisions for all of the following:~~

10 ~~(a) Notification of injuries and a report of suspected child sexual~~  
11 ~~abuse to law enforcement authorities.~~

12 ~~(b) Obtaining consent for the examination, treatment of injuries,~~  
13 ~~collection of evidence, and photographing of injuries.~~

14 ~~(c) Taking a patient history of sexual assault and other relevant~~  
15 ~~medical history.~~

16 ~~(d) Performance of the physical examination for evidence of~~  
17 ~~sexual assault.~~

18 ~~(e) Collection of physical evidence of assault.~~

19 ~~(f) Collection of other medical specimens.~~

20 ~~(g) Procedures for the preservation and disposition of physical~~  
21 ~~evidence.~~